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[H.A.S.C. No. 97-39]

ORIGINAL
COMPLETED

HEARING

ON

H.R. 5241

[H.R. 6451]

MILITARY CONSTRUCTION CODIFICATION ACT

BEFORE THE

MILITARY INSTALLATIONS AND FACILITIES SUBCOMMITTEE

OF THE

COMMITTEE ON ARMED SERVICES HOUSE OF REPRESENTATIVES

NINETY-SEVENTH CONGRESS

SECOND SESSION

MARCH 5, 1982

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97TH CONGRESS
1ST SESSION

H. R. 5241

To amend title 10, United States Code, to revise and codify the permanent provisions of law relating to military construction and military family housing.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 16, 1981

Mr. BRINKLEY (for himself and Mr. TRIBLE) introduced the following bill; which was referred to the Committee on Armed Services

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A BILL

To amend title 10, United States Code, to revise and codify the permanent provisions of law relating to military construction and military family housing.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Military Construction Codification Act".

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ENACTMENT OF MILITARY CONSTRUCTION CHAPTER IN TITLE 10 AND TRANSFER OF RELATED PROVISIONS INTO THAT CHAPTER

SEC. 2. (a) Title 10, United States Code, is amended by adding at the end of subtitle A the following new chapter:

"CHAPTER 169—MILITARY CONSTRUCTION AND MILITARY FAMILY HOUSING

"Subchapter	Sec.
"I. Military Construction	2801
"II. Military Family Housing	2821
"III. Administration of Military Construction and Military Family Housing	2851

"SUBCHAPTER I—MILITARY CONSTRUCTION

"Sec.
"2801. Military construction projects.
"2802. Emergency construction.
"2803. Contingency construction.
"2804. Minor construction.
"2805. Contributions for North Atlantic Treaty Organization Infrastructure.
"2806. Restoration or replacement of facilities damaged or destroyed.
"2807. Authorized cost variations for military construction projects.
"2808. Advance planning, construction design, and architectural and engineering services.
"2809. Construction authority in the event of a declaration of war or national emergency.
"2810. Definitions.

"§ 2801. Military construction projects

"(a) The Secretary of Defense and the Secretaries of the military departments may carry out such military construction projects as are authorized by law.

"(b) Authority provided by law to carry out a military construction project under this chapter includes authority for—

"(1) acquisition of land and interests in land (including temporary interests) incident to the project;

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"(2) surveys and site preparation;

"(3) acquisition, conversion, rehabilitation, and installation of permanent and temporary facilities;

"(4) acquisition and installation of appurtenances, supporting facilities, and utilities integral to the project;

"(5) acquisition and installation of equipment integral to the project; and

"(6) planning, supervision, administration, and overhead incident to the project.

"(c) Authority provided by law to acquire land or interests in land (including temporary interests) under this chapter incident to a military construction project includes authority—

"(1) to make surveys; and

"(2) to acquire that land or interests in land by purchase, gift, exchange of Government-owned land, or otherwise.

"§ 2802. Emergency construction

"(a) Subject to subsections (b) and (c), the Secretary of each military department and the Secretary of Defense, for the defense agencies, may carry out a military construction project not otherwise authorized by law if the Secretary of Defense determines that deferral of that project for inclusion

in the next Military Construction Authorization Act would be inconsistent with the interests of national security.

"(b) When a decision is made to carry out a military construction project under this section, the Secretary of the military department concerned or Secretary of Defense, for the defense agencies, shall submit a report in writing to the appropriate committees of Congress on that decision. Any such report shall include the justification for the project and the current estimate of the cost of the project and the justification for carrying out the project under this section. Such project may then be carried out only (1) after the end of the 15-day period beginning on the date the notification is received by the committees, or (2) after each such committee has approved of the project, if the committees approve of the project before the end of that period.

"(c) A military construction project carried out under this section shall be carried out within the total amount of funds appropriated for military construction for the military department concerned (or for the defense agencies) that have not been obligated or expended.

"§ 2803. Contingency construction

"(a) Within amounts authorized by law for such purpose for any fiscal year, the Secretary of Defense may carry out a military construction project not otherwise authorized by law

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if the Secretary determines that the project is vital to the security of the United States.

"(b) When a decision is made to carry out a military construction project under this section, the Secretary of Defense shall submit a report in writing to the appropriate committees of Congress on that decision. Any such report shall include the justification for the project and the current estimate of the cost of the project and the justification for carrying out the project under this section. Such project may then be carried out only (1) after the end of the 15-day period beginning on the date the notification is received by the committees, or (2) after each such committee has approved of the project, if the committees approve of the project before the end of that period.

"§ 2804. Minor construction

"(a)(1) Within the amount authorized by law for such purpose for any fiscal year, the Secretary of a military department or the Director of a defense agency may carry out minor military construction projects not otherwise authorized by law. A minor military construction project is a military construction project with an approved cost of not more than $1,000,000.

"(2) This subsection does not authorize the construction of military family housing.

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"(b) Notwithstanding the maximum cost prescribed for a minor military construction project in subsection (a), the cost authorized for a minor military construction project may be increased—

"(1) to not more than 110 percent of the amount specified in subsection (a), if the Secretary of Defense determines that such an increase is required for the sole purpose of meeting unusual variations in cost and that such variations in cost could not have been reasonably anticipated at the time the project was originally approved by Congress; and

"(2) to more than 110 percent but not more than 125 percent of the amount specified in subsection (a), if (A) the Secretary of Defense determines that such an increase is required for the sole purpose of meeting unusual variations in cost and that such variations in cost could not have been reasonably anticipated at the time the project was originally approved by Congress, (B) the Secretary of Defense has notified the appropriate committees of Congress in writing that he has made those determinations with respect to the project, and (C) a 15-day period has elapsed after the date the notification is received by the committees or both committees approve such increase before the expiration of the 15-day period.

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"(c)(1) Except as provided in paragraph (2), a minor military construction project costing more than 75 percent of the amount specified in subsection (a) may not be carried out unless approved in advance by the Secretary of Defense, and a project costing more than 50 percent of that amount may not be carried out unless approved in advance by the Secretary of the military department or the Director of the defense agency concerned.

"(2) Approval under this subsection is not required if the project has been authorized in a Military Construction Authorization Act.

"(d) In addition to funds authorized to be appropriated to a military department or to the defense agencies for minor construction projects, the Secretary of a military department or the Director of a defense agency may spend, from appropriations available for operations and maintenance, amounts necessary to carry out any military construction project costing not more than 10 percent of the amount specified in subsection (a).

"(e)(1) When a decision is made to carry out a minor military construction project under this section costing more than 50 percent of the amount specified in subsection (a), the Secretary of each military department and the Secretary of Defense, for the defense agencies, shall notify in writing the appropriate committees of the Senate and House of Repre-

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sentatives of that decision, of the justification for that project, and of the estimated cost of the project. The project may then be carried out only (A) after the end of the 15-day period beginning on the date the notification is received by the committees, or (B) after each such committee approves of the project, if the committees approve of the project before the end of that period.

"(2) Notice under this subsection is not required in the case of a project that has been authorized in an annual Military Construction Authorization Act.

"§ 2805. Contributions for North Atlantic Treaty Organization Infrastructure

"(a) The Secretary of Defense may make contributions in amounts authorized by law for the United States share of the cost of multilateral programs for the acquisition and construction of military facilities and installations (including international military headquarters) for the collective defense of the North Atlantic Treaty Area.

"(b) Within 30 days after the end of each calendar-year quarter, the Secretary of Defense shall furnish to the appropriate committees of Congress a description of the obligations incurred by the United States during the preceding quarter for the United States share of the cost of such multilateral programs.

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"(c)(1) The Secretary of Defense may increase the amount authorized by law for contribution under subsection (a) in any fiscal year by not more than 25 percent.

"(2) If the Secretary determines that the amount authorized for contribution under subsection (a) in any year must be increased by more than 25 percent, the Secretary may proceed with contributions at such higher level (1) after submitting a report in writing to the appropriate committees of Congress on such increase, including a statement of the reasons for the increase, and (2) after either a period of 15 days has elapsed from the date of receipt of the report or each such committee has indicated approval of the increased contribution.

"§ 2806. Restoration or replacement of facilities damaged or destroyed

"(a) Subject to subsection (b) and within the total amount of funds appropriated for military construction that have not been obligated or expended, the Secretary of Defense and the Secretary of each military department may carry out a military construction project not otherwise authorized by law if the project is necessary to restore or replace any facility that has been damaged or destroyed by fire, explosion, earthquake, flood, or act of God.

"(b) When a decision is made to carry out a military construction project under this section, the Secretary of De-

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fense shall notify in writing the appropriate committees of Congress of that decision, of the justification for the project, of the current estimate of the cost of the project, and of the justification for carrying out the project under this section. The project may then be carried out only (1) after the end of the 15-day period beginning on the date the notification is received by such committees, or (2) after each such committee approves of the project, if those committees approve of the project before the end of the period.

"§ 2807. Authorized cost variations for military construction projects

"(a) Except as provided in subsection (d), a military construction project (other than a minor military construction project) for which the amount authorized by Congress is less than $10,000,000 may not be placed under contract if, based upon bids received—

"(1) the scope of work for the project, as approved by the Congress, is proposed to be reduced by more than 25 percent; or

"(2) the current working estimate of the cost of the project exceeds by more than 25 percent the amount authorized for the project by the Congress.

"(b) Except as provided in subsection (d), a military construction project for which the amount authorized by Congress is $10,000,000 or more but less than $100,000,000

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may not be placed under contract if, based upon bids received—

"(1) the scope of work for the project, as approved by the Congress, is proposed to be reduced by more than 10 percent; or

"(2) the current working estimate of the cost of the project exceeds by more than 10 percent the amount authorized for the project by the Congress.

"(c) Except as provided in subsection (d), a military construction project for which the amount authorized by Congress is $100,000,000 or more may not be placed under contract if, based upon bids received—

"(1) the scope of work for the project, as approved by the Congress, is proposed to be reduced by more than 5 percent; or

"(2) the current working estimate of the cost of the project exceeds by more than 5 percent the amount authorized for the project by the Congress.

"(d) The prohibitions in subsections (a), (b), and (c) do not apply if the reduction in scope of work or the increase in cost, as the case may be, is approved by the Secretary of Defense and a written notification of the facts relating to the proposed reduced scope of work or increased cost (including a statement of the reasons therefor) is submitted by the Secretary concerned or Director of the defense agency concerned

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to the appropriate committees of Congress. A contract for the project may not then be awarded until either (1) a period of 15 days elapses from the date the notification is received by those committees, or (2) before the end of that period each such committee approves the proposed reduced scope of work or increased cost.

"§ 2808. Advance planning, construction design, and architectural and engineering services

"(a) Within the amounts authorized by law for such purposes for any fiscal year, the Secretary of Defense and the Secretaries of the military departments may carry out advance planning and construction design and may obtain architectural and engineering services in connection with (1) military construction projects not otherwise authorized by law, and (2) construction management of projects that are funded by foreign governments directly or through international organizations and for which military forces of the United States are the sole or primary user.

"(b) In the case of advance planning, construction design, and architectural and engineering services to be undertaken under subsection (a) for which the estimated cost exceeds $250,000, the Secretary of Defense shall notify the appropriate committees of Congress of the scope of the proposed project and the estimated cost of such services not less

than 15 days before the initial obligation of funds for such services.

"§ 2809. Construction authority in the event of a declaration of war or national emergency

"(a) In the event of a declaration of war or the declaration by the President of a national emergency in accordance with the National Emergencies Act (50 U.S.C. 1601 et seq.) requiring use of the armed forces, the Secretary of Defense may, without regard to any other provision of law, undertake military construction projects necessary to support such use within the total amount of funds that have been appropriated for military construction, including funds appropriated for family housing, that have not been obligated.

"(b) The authority described in subsection (a) shall terminate at the end of the war or national emergency.

"(c) When a decision is made to undertake military construction projects authorized by this section, the Secretary of Defense shall notify the appropriate committees of Congress of the decision and of the estimated cost of the construction projects, including the cost of any real estate action pertaining to those construction projects.

"§ 2810. Definitions

"(a) A military construction project is a single undertaking at a military installation that includes all construction work, land acquisition, and installation of equipment neces-

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sary to accomplish a specific purpose, and to produce a complete and usable facility or a complete and usable improvement to an existing facility.

"(b) In this chapter:

"(1) 'Military installation' means a camp, post, station, base, yard, or other facility under the jurisdiction of the Secretary of a military department.

"(2) 'Appropriate committees of Congress' means the Committees on Armed Services and on Appropriations of the Senate and House of Representatives.

"SUBCHAPTER II—MILITARY FAMILY HOUSING

"Sec.
"2821. Requirement for authorization of appropriations for construction and acquisition of military family housing.
"2822. Requirement for authorization of number of family housing units.
"2823. Determination of availability of suitable private housing for acquisition in lieu of construction of new family housing.
"2824. Authorization for acquisition of existing family housing in lieu of construction.
"2825. Authorized cost variation.
"2826. Improvements to family housing units: cost limitation.
"2827. Limitations on space by pay grade.
"2828. Relocation of military family housing units.
"2829. Leasing of military family housing.
"2830. Multiyear contracts for supplies and services.
"2831. Occupancy of inadequate family housing units.
"2832. Settlement of contractor claims on military family housing.
"2833. Military family housing management account.
"2834. Homeowners assistance program.

"§ 2821. Requirement for authorization of appropriations for construction and acquisition of military family housing

"(a)(1) Funds may not be appropriated for the construction, acquisition, leasing, addition, extension, expansion, alteration, relocation, or operation and maintenance of family

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housing under the jurisdiction of the Department of Defense unless the appropriation of such funds has been authorized by law.

"(2) Amounts authorized to be appropriated for such purposes that are for salary, pay, retirement benefits, or other benefits for Federal employees may be administratively increased by such amounts as may be necessary for increases in such benefits authorized by law.

"(b) Authority of the Secretary of Defense provided by law to construct military family housing units and to acquire mobile home facilities includes authority to acquire land and interests in land by gift, purchase, exchange of Government-owned land, or otherwise.

"(c) Amounts authorized by law for construction of military family housing units include amounts for (1) land acquisition, (2) site preparation (including demolition), (3) installation of utilities, (4) shades, screens, ranges, refrigerators, and all other equipment and fixtures installed in such units, and (5) construction supervision, inspection, and overhead.

"§ 2822. Requirement for authorization of number of family housing units

"(a) Except as otherwise provided in subsection (b), the Secretary of Defense may not construct or acquire military family housing units unless the number of units to be constructed or acquired has been specifically authorized by law

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"(b) Subsection (a) does not apply to the following:

"(1) Housing units acquired under section 404 of the Housing Amendments of 1955 (42 U.S.C. 1594a).

"(2) Housing units leased in foreign countries for terms of 1 year, whether renewable or not, or for terms of not more than 10 years under section 2829 of this title.

"(3) Housing units acquired under the authority of the Secretary of Defense described in section 2834 of this title.

"§ 2823. Determination of availability of suitable private housing for acquisition in lieu of construction of new family housing

"(a) Before entering into a contract for the construction of family housing units authorized by law to be constructed at a location within the United States, the Secretary of Defense shall consult with the Secretary of Housing and Urban Development as to the availability of suitable private housing at such location. The Secretary of Housing and Urban Development shall advise the Secretary of Defense as to the availability of such housing. If the Secretary of Housing and Urban Development does not advise the Secretary of Defense as to the availability of such housing within 30 days of the date on which the request for such advice is made, the Secre-

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tary of Defense may enter into a contract for the proposed construction.

"(b) If the Secretary of Defense and the Secretary of Housing and Urban Development disagree with respect to the availability of suitable private housing at any location, the Secretary of Defense shall notify the appropriate committees of the Senate and House of Representatives, in writing, of such disagreement, and a contract for construction of family housing units at such location may not then be entered into until the end of the 30-day period beginning on the date those committees receive such notification. Upon the expiration of such 30-day period, the Secretary may enter into such a contract.

"(c) If the Secretary and the Secretary of Housing and Urban Development agree that suitable private housing is available at a location at which military family housing units are authorized to be constructed, the Secretary may not proceed with such construction, but shall provide for such military family housing units by the acquisition of such private housing in accordance with section 2824 of this title.

"(d) In this section, 'suitable private housing' means existing housing that is not owned by any governmental entity and that meets current Department of Defense standards with respect to size, quality of construction, maintainability, location, and energy conservation.

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"§ 2824. Authorization for acquisition of existing family housing in lieu of construction

"(a) In lieu of constructing any family housing units authorized by law to be constructed, the Secretary of Defense may acquire sole interest in existing family housing units that are privately owned or that are held by the Department of Housing and Urban Development, except that in foreign countries the Secretary may acquire less than sole interest in existing family housing units.

"(b) The net floor area of a family housing unit acquired under the authority of this section may not exceed the applicable limitation specified in section 2828 of this title.

"(c) Family housing units may not be acquired under this section through the exercise of eminent domain authority.

"§ 2825. Authorized cost variation

"The Secretary of Defense may authorize the total cost of construction and acquisition for military family housing units authorized by law at any installation or facility to exceed the amount authorized for such construction and acquisition by not more than 10 percent if the Secretary determines that the increase is required for the sole purpose of meeting unforeseen variations in cost and could not have been reasonably anticipated at the time the estimate of the cost of the construction was submitted to Congress.

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"§ 2826. Improvements to family housing units: cost limitation

"(a) Authority provided by law to improve existing military family housing units is limited to authority to make alterations, additions, expansions, and extensions.

"(b)(1) Funds may not be expended for the improvement of any single family housing unit, or for the improvement of two or more housing units that are to be converted into or are to be used as a single family housing unit, if the cost of such improvement will exceed $20,000 per unit (adjusted by the area construction cost index as developed by the Department of Defense for the location concerned at the time of contract award).

"(2) In determining the applicability of the limitation contained in paragraph (1), there shall be included as part of the cost of the improvement the cost of repairs undertaken in connection with the improvement and any cost in connection with (A) the furnishing of electricity, gas, water and sewage disposal, (B) the construction or repair of roads and walks, and (C) grading and drainage work.

"(3) In this subsection, 'improvement' includes rehabilitation of a housing unit and maintenance or repair work to be accomplished concurrently with an improvement project.

"(4) This subsection does not apply to projects authorized for restoration or replacement of housing units that have been damaged or destroyed by accident or act of God.

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"§ 2827. Limitations on space by pay grade

"(a) In the construction, acquisition, improvement, and leasing of military family housing units, the following are the space limitations for the applicable numbers of bedrooms permitted for each pay grade:

Pay grade	Number of bedrooms	Net floor area (square feet)
O–7 and above	4	2,100
O–6	4	1,700
O–4 and O–5	4	1,550
	3	1,400
O–1 through O–3; W–1 through W–4; and E–7 through E–9	5	1,550
	4	1,450
	3	1,350
	2	950
E–1 through E–6	5	1,550
	4	1,350
	3	1,200
	2	950

"(b) The applicable maximum net floor area prescribed by subsection (a) may be increased by 10 percent for the housing unit of an officer holding a special command position (as designated by the Secretary of Defense) and for the housing unit of the commanding officer of any military installation.

"(c) The maximum net floor area prescribed by subsection (a) may be increased in any case by 5 percent if the Secretary of Defense determines that the increase is in the best interest of the Government (1) to permit award of a turnkey construction contract to the contractor offering the most satisfactory proposal, or (2) to permit purchase, lease,

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or conversion of housing units. An increase in the maximum net floor area of a housing unit under subsection (b) when combined with an increase in the maximum net floor area of such unit under this subsection may not exceed 10 percent of the otherwise applicable limitation prescribed by subsection (a).

"(d)(1) The Secretary of Defense may waive the provisions of subsection (a) with respect to a family housing unit leased in a foreign country if a suitable family housing unit within the applicable maximum net floor area prescribed by such subsection cannot be obtained.

"(2) Subsection (a) does not apply to family housing units in foreign countries obtained by the Secretary of State for members of the armed forces.

"(e) The maximum net floor areas prescribed by this section apply to family housing provided to civilian personnel based upon civilian pay scale comparability with military pay grades, as determined by the Secretary of Defense.

"(f) In this section, 'net floor area' means the total number of square feet of the floor space inside the exterior walls of a structure, excluding the floor area of an unfinished basement, an unfinished attic, a utility space, a garage, a carport, an open or insect-screened porch, a stairwell, and any space used for a solar-energy system.

"§ 2828. Relocation of military family housing units

"(a) Subject to subsection (b), the Secretary of Defense may relocate military family housing units from any location where the number of such units exceeds requirements for military family housing to any military installation where there is a housing shortage.

"(b) A contract to carry out a relocation of military family housing units under subsection (a) may not be awarded until (1) the Secretary of Defense has notified the appropriate committees of Congress of the proposed new locations of the housing units to be relocated and the estimated cost of the relocation, and (2) a period of 15 days has elapsed after the notification has been received by those committees.

"§ 2829. Leasing of military family housing

"(a)(1) The Secretaries of the military departments and the Directors of the defense agencies may lease housing facilities at or near a military installation for assignment, without rental charge, as family housing to members of the armed forces stationed at such installation.

"(2) A lease may not be made under paragraph (1) unless the Secretary of Defense finds that there is a shortage of adequate housing at or near such military installation and that, with respect to such installation—

"(A) the requirement for such housing is temporary;

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"(B) leasing would be more cost effective than construction or acquisition of new housing;

"(C) family housing is required for personnel attending service school academic courses on permanent change of station orders;

"(D) construction of family housing at such installation has been authorized by law but is not yet completed; or

"(E) a military construction authorization bill pending in Congress includes a request for authorization of construction of family housing at such installation..

"(b)(1) Not more than 10,000 family housing units may be leased in the United States, Puerto Rico, and Guam at any one time under subsection (a).

"(2) Except as provided in paragraph (3), expenditures for the rental of housing units in the United States, Puerto Rico, and Guam (including the cost of utilities, maintenance, and operation) may not exceed $515 per month for any unit.

"(3) The Secretary of Defense may lease not more than 500 housing units in the United States, Puerto Rico, and Guam under this section for which the expenditure for the rental of such units (including the cost of utilities, maintenance, and operation) exceeds $515 per month but does not exceed $600 per month.

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"(c) In addition to the authority to lease housing facilities in foreign countries under the circumstances specified in subsection (a), the Secretaries of the military departments and the Directors of the defense agencies may lease housing facilities in foreign countries for assignment as military family housing—

"(1) for incumbents of special command positions (as determined by the Secretary of Defense);

"(2) for key and essential civilian personnel;

"(3) in countries where excessive costs of housing or other lease terms would cause undue hardship on Department of Defense personnel; and

"(4) in countries that prohibit leases by individual military or civilian personnel of the United States.

"(d) Leases of housing units in foreign countries under subsection (a) or (c) for assignment as military family housing may be for any period not in excess of 10 years, and the costs of such leases for any year may be paid out of annual appropriations for operation and maintenance for that year.

"(e)(1) Expenditures for the rental of family housing in foreign countries (including the costs of utilities, maintenance, and operation) may not exceed $1,115 per month for any unit. The Secretary of Defense may waive the cost limitations specified in the preceding sentence with respect to not more than 250 such units that are leased for incumbents of

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special positions or for personnel assigned to Defense Attaché Offices or that are leased in countries where excessive costs of housing would cause undue hardship on Department of Defense personnel.

"(2) Not more than 22,000 family housing units may be leased by the Secretary of Defense in foreign countries at any one time.

"(f) A lease for a family housing unit, or for any real property related to a family housing unit, in a foreign country for which the average estimated annual rental during the term of the lease exceeds $250,000 may not be made under this section until (1) the Secretary of Defense provides to the appropriate committees of Congress written notification of the facts concerning the proposed lease, and (2) a period of 30 days elapses after the notification is received by those committees.

"§ 2830. Multiyear contracts for supplies and services

"The Secretary of Defense may make contracts for periods of up to 5 years for supplies and services for the management, maintenance, and operation of military family housing and may pay the costs of such contracts for each year out of annual appropriations for operation and maintenance of military family housing for that year.

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"§ 2831. Occupancy of inadequate family housing units

"(a)(1) A member of the uniformed services with dependents may, without loss of the member's basic allowance for quarters, occupy an inadequate family housing unit under the jurisdiction of the Secretary of a military department.

"(2) Occupancy of a family housing unit under paragraph (1) shall be subject to a charge against the member's basic allowance for quarters in the amount of the fair rental value of the housing unit. However, such a charge may not be made in an amount in excess of 75 percent of the amount of such allowance, except that in no event may the amount of such charge be less than the cost of operation and maintenance of such unit (up to 100 percent of the amount of such allowance).

"(b) Subject to regulations prescribed by the Secretary of Defense, the Secretary of a military department may lease inadequate family housing units to members of any of the uniformed services for occupancy by such members.

"(c) In this section, the term 'uniformed services' means the armed forces and the Commissioned Corps of the Public Health Service and of the National Oceanic and Atmospheric Administration.

"§ 2832. Settlement of contractor claims on military family housing

"If the proposed settlement of a contractor claim arising out of the construction of new military family housing or the

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improvement of existing military family housing would cause authorized cost limitations on the construction or improvement of military family housing to be exceeded, the Secretary of the military department concerned may proceed with the settlement of such claim after (1) he has submitted a report regarding such claim, including the amount of the proposed settlement, to the committees of Congress, and (2) a period of 15 days has elapsed after the date of submission of the report to those committees.

"§ 2833. Military family housing management account

"(a) There is on the books of the Treasury an account known as the Department of Defense Military Family Housing Management Account (hereinafter in this section referred to as the 'account'). The account shall be used for the management and administration of funds appropriated or otherwise made available to the Department of Defense for military family housing programs.

"(b) The account shall be administered by the Secretary of Defense as a single account. There shall be transferred into the account—

"(1) appropriations made to the Department of Defense for the purpose of, or which are available for, the payment of costs arising in connection with the construction, acquisition, leasing, relocation, operation and maintenance, and disposal of military family hous-

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ing, including the cost of principal and interest charges, and insurance premiums, arising in connection with the acquisition of such housing, and mortgage insurance premiums payable under section 222(c) of the National Housing Act (12 U.S.C. 1715m(c));

"(2) proceeds from the rental of family housing and mobile home facilities under the control of the Department of Defense, reimbursements from the occupants of such facilities for services rendered (including utility costs), funds obtained from individuals as a result of losses, damages, or destruction to such facilities caused by the abuse or negligence of such individuals, and reimbursements from other Government agencies for expenditures from the account; and

"(3) proceeds of the handling and the disposal of family housing of the Department of Defense (including related land and improvements), whether carried out by the Department of Defense or any other Federal agency, but less those expenses payable pursuant to section 204(b) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 485(b)).

"(c) Amounts in the account shall remain available until expended.

"(d) The Secretary of Defense may make obligations against the account, in such amounts as may be specified

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from time to time in appropriation Acts, for the purpose of defraying, in the manner and to the extent authorized by law, the costs referred to in subsection (b).

"§ 2834. Homeowners assistance program

"The Secretary of Defense may exercise the authority provided in section 1013 of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3374).

"SUBCHAPTER III—ADMINISTRATION OF MILITARY CONSTRUCTION AND MILITARY FAMILY HOUSING

"Sec.
"2851. Military construction projects: waiver of certain restrictions.
"2852. Use of solar energy systems.
"2853. Supervision of military construction projects.
"2854. Military construction contracts.
"2855. Limitations on size of permanent barracks and on cost per square foot of permanent barracks and unaccompanied officer quarters.
"2856. Facilities for defense agencies.
"2857. Availability of appropriations until spent.
"2858. Limitations on the use of funds appropriated for military construction.
"2859. Annual report to Congress on military construction.
"2860. Transmission of annual military construction authorization request.
"2861. Design for fallout protection.

"§ 2851. Military construction projects: waiver of certain restrictions

"(a) The Secretary of Defense and the Secretaries of the military departments may carry out authorized military construction projects and authorized military family housing projects without regard to section 3648 of the Revised Statutes (31 U.S.C. 529).

"(b) Authority to carry out a military construction project or a military family housing project on land not owned by

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the United States may be exercised before title to the land on which the project is to be carried out is approved under section 355 of the Revised Statutes (40 U.S.C. 255) and may be carried out even though the land is held temporarily.

"§ 2852. Use of solar energy systems

"(a)(1) The Secretary of Defense shall encourage the use of solar energy as a source of energy for military construction projects (including military family housing projects) where use of solar energy would be practical and economically feasible.

"(2) The Secretary shall require that the design of all new facilities (including family housing) shall include consideration of solar energy systems in those cases in which use of solar energy has the potential for significant savings of fossil-fuel-derived energy.

"(3) The Secretary shall require that contracts for construction resulting from such design include a requirement that the contractor furnish and install solar energy systems if such systems can be shown to be cost effective.

"(b)(1) For the purposes of this section, a solar energy system for a facility shall be considered to be cost effective if the difference between (A) the original investment cost of the energy system for the facility with a solar energy system, and (B) the original investment cost of the energy system for

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the facility without a solar energy system can be recovered over the expected life of the facility.

"(2) A determination under paragraph (1) of whether a cost-differential can be recovered over the expected life of a facility shall be made using accepted life-cycle costing procedures and shall include—

"(A) the use of all capital expenses and all operating and maintenance expenses associated with the energy system with and without a solar energy system over the expected life of the facility or during a period of 25 years, whichever is shorter;

"(B) the use of fossil fuel costs (and a rate of inflation for fossil fuel costs) as determined by the Secretary of Defense; and

"(C) the use of a discount rate of 7 percent per year for all expenses of the energy system.

"(3) For the purposes of this subsection (including any life-cycle cost analysis under this subsection), the original investment cost of a solar energy system shall be reduced by 10 percent as an investment cost credit.

"(c) In order to equip a military construction project (including a military family housing project) with solar heating equipment, solar cooling equipment, or both solar heating and solar cooling equipment, the Secretary may authorize an increase in any otherwise applicable limitation with respect

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to the number of square feet or the cost per square foot of the project by such amount as may be necessary for such purpose. Any such increase under this subsection shall be in addition to any other administrative increase in cost per square foot or variation in floor area authorized by law.

"§ 2853. Supervision of military construction projects

"Each contract entered into by the United States in connection with a military construction project or a military family housing project shall be carried out under the direction and supervision of the Secretary of the Army (acting through the Chief of Engineers), the Secretary of the Navy (acting through the commander of the Naval Facilities Engineering Command), or such other department or Government agency as the Secretary of Defense approves to assure the most efficient, expeditious, and cost-effective completion of the project.

"§ 2854. Military construction contracts

"(a) Except as provided under subsection (b), a contract entered into by the United States in connection with a military construction project or a military family housing project shall be awarded, insofar as is practicable, on a competitive basis to the lowest responsible bidder.

"(b)(1) Subsection (a) does not apply if the award of a contract to the lowest responsible bidder may impair the na-

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tional security or if the award would not be consistent with chapter 137 of this title.

"(2) Architect and engineering contracts in connection with a military construction project or a military family housing project shall be awarded in accordance with title IX of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 541–544).

"§ 2855. Limitations on size of permanent barracks and on cost per square foot of permanent barracks and unaccompanied officers quarters

"(a)(1) The maximum allowable total square foot area for a military construction project for new permanent barracks is the product of—

"(A) the number of design occupants of the proposed facility (as determined under paragraph (2)); and

"(B) 160 square feet.

"(2) The number of design occupants of a proposed facility is the sum of—

"(A) the number of enlisted personnel in pay grades E–1 through E–4 to be housed in the facility;

"(B) two times the number of enlisted personnel in pay grades E–5 through E–6 to be housed in the facility; and

"(C) three times the number of enlisted personnel in pay grades E–7 through E–9 to be housed in the facility.

"(b)(1) The cost per square foot of a military construction project for permanent barracks or for unaccompanied officers quarters that is authorized for a location inside the United States may not exceed the applicable cost per square foot prescribed in accordance with paragraph (2) unless the Secretary of Defense determines that, because of special circumstances, limitation to such cost per square foot would be impracticable.

"(2) The maximum cost per square foot of a project described in paragraph (1) shall be determined in proportion to the appropriate area construction cost index based on a cost where the area construction cost index is 1.0 of $53 per square foot for permanent barracks and of $57 per square foot for unaccompanied officers quarters.

"(3) Whenever the limitations contained in paragraph (2) on costs per square foot projects are increased or decreased, the new limitations shall be applicable to a project authorized before the effective date of the new limitations if on such effective date the authorization for that project has not expired and a construction contract has not been awarded for that project.

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"§ 2856. Facilities for defense agencies

"A military construction project for an activity or agency of the Department of Defense (other than a military department), and the operation, maintenance, and repair of a real property facility of the Department of Defense used by such an activity or agency, shall be accomplished by or through a military department designated by the Secretary of Defense. A real property facility under the jurisdiction of the Department of Defense that is used by an activity or agency of the Department of Defense (other than a military department) shall be under the jurisdiction of a military department designated by the Secretary of Defense.

"§ 2857. Availability of appropriations until spent

"Funds appropriated to the Department of Defense for military construction (including military family housing) remain available until spent.

"§ 2858. Limitations on the use of funds appropriated for military construction

"(a)(1) Funds appropriated for military construction may not be used to begin construction of a new military installation within the continental United States unless such funds have been specifically appropriated for such construction.

"(2) In this subsection, 'military installation' means a camp, post, station, base, yard, or other facility under the jurisdiction of the Secretary of a military department.

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"(b) Funds appropriated for military construction (including military family housing) may not be expended for additional costs involved in expediting a construction project unless the Secretary of Defense (1) certifies that expenditures for such costs are necessary to protect the national interest, and (2) establishes a reasonable completion date for the project. In establishing such a completion date, the Secretary shall take into consideration the urgency of the requirement for completion of the project, the type and location of the project, the climatic and seasonal conditions affecting the construction involved, and the application of economical construction practices.

"(c) Funds appropriated for military construction (including military family housing) may not be expended for payments under a cost-plus-a-fixed-fee contract for work to be performed within the United States (other than in Alaska) for which cost estimates exceed $25,000 unless the Secretary of Defense has specifically approved the payments and has stated his approval and the reasons for such approval in writing.

"(d) Funds appropriated for military construction (including military family housing) may not be used to make payments in connection with a military construction project in a foreign country unless the Secretary of Defense, after consultation with the Secretary of the Treasury, determines

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that the use (by purchase from the Treasury) of currencies of such country that are owned by the United States is not feasible for such purpose and certifies that determination to the Congress in writing together with a statement of the Secretary's reasons for that determination.

"(e) Funds appropriated for military construction may not be used to acquire land, provide for site preparation, or install utilities for a military family housing project unless funds for the project have been made available in an appropriation Act.

"(f) Funds appropriated for military construction (including military family housing) may not be used for the construction, replacement, or reactivation of any bakery, laundry, or dry cleaning facility in the United States (or the territories or possessions of the United States) unless the Secretary of Defense certifies in writing that the services to be furnished by the facility are not obtainable from commercial sources at reasonable rates. Any such certification shall include the Secretary's reasons for the certification.

"§ 2859. Annual report to Congress on military construction

"(a) The Secretary of Defense shall submit a report to the appropriate committees of Congress not later than January 15 of each year with respect to military construction ac-

tivities and military family housing activities during the preceding fiscal year.

"(b) Each report under subsection (a) shall include a listing of each military construction project (other than a minor military construction project carried out under section 2805 of this title) placed under contract during the preceding fiscal year with respect to which (1) the current working estimate of the Department of Defense for the cost of the project exceeds the amount authorized for the project by Congress by more than 25 percent, or (2) the scope of work has been reduced by more than 25 percent from that authorized by Congress in order to permit a contract award within the available authorization for the project. Each such report shall also include all pertinent cost information with respect to each project listed in such report pursuant to the preceding sentence and, in the case of a project described in clause (1), shall include the amount, expressed in dollars and as a percentage, by which the current working estimate of the cost of the project exceeds the amount authorized for the project by Congress.

"(c) Each report under subsection (a) shall also include a statement setting forth the dollar value of construction contracts completed during the preceding fiscal year by each military construction agency specified or designated under section 2853 of this title and the fees charged by each such

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construction agency during such year for design, construction supervision, inspection, and overhead in the execution of military construction projects.

"(d) Each report under subsection (a) shall also include with respect to each contract awarded during the preceding fiscal year on other than a competitive basis to the lowest responsible bidder the following information: the name of the contractor, the original amount of the contract, and the reason for the award of the contract on other than a competitive basis.

"(e) Each report under subsection (a) shall also show the names of each of the 10 architect-engineering firms that were awarded the largest aggregate amount of business (measured by total dollar value of contracts entered into) during the preceding fiscal year, the number of separate contracts awarded each such firm during such year, and the total amount paid or to be paid to each such firm under all such contracts awarded to such firm.

"(f) Each report under subsection (a) shall also include a listing of all minor construction contracts awarded during the preceding fiscal year.

"§ 2860. Transmission of annual military construction authorization request

"The Secretary of Defense shall transmit to Congress the annual request for military construction authorization for

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a fiscal year during the first 10 days after the President transmits to Congress the Budget for that fiscal year pursuant to section 201 of the Budget and Accounting Act, 1921 (31 U.S.C. 11).

"§ 2861. Design for fallout protection

"(a) Each military construction project shall be designed using techniques to provide maximum nuclear fallout protection if such a design can be accomplished without impairing the purpose for which the construction is authorized and without impairing the effectiveness of the facility to be constructed. Under regulations prescribed by the Secretary of Defense, the Secretary may exempt any facility from the requirements of the preceding sentence.

"(b) The Secretary of Defense shall make appropriate provision for the use of technical design and construction methods to assure compliance with this section.

"(c) Expenditures on an individual project for the purposes of this section may not exceed 1 percent of the amount authorized for that project. The authorization in the preceding sentence may be averaged and applied to one of two or more facilities, or among projects on an installation, if such application will result in more fallout shelter space or is needed to meet minimum nuclear fallout protection standards in such facilities or projects.".

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(b) The tables of chapters at the beginning of subtitle A, and at the beginning of part IV of subtitle A, of title 10, United States Code, are amended by adding at the end thereof the following:

"169. Military Construction and Military Family Housing ..... 2801".

AMENDMENTS RELATING TO FACILITIES FOR RESERVE COMPONENTS

SEC. 3. (a) Subsection (f) of section 2233 of title 10, United States Code, is amended to read as follows:

"(f)(1) Authority provided by law to construct, expand, rehabilitate, convert, or equip any facility, or to make contributions for such purposes, under this section includes authority to expend funds for surveys, administration, overhead, planning, and supervision incident to any such activity.

"(2) Authority provided by law to acquire real estate, or to make contributions for the acquisition of real estate, under this section includes authority to make surveys and to acquire interests in land (including temporary interests) by purchase, gift, exchange of Government-owned land, or otherwise.".

(b)(1) Chapter 133 of such title is amended by adding at the end thereof the following new section:

"**§ 2239. Waiver of certain restrictions**

"(a) The Secretary of Defense and the Secretary of each military department may make expenditures and contribu-

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tions under section 2233 of this title without regard to section 3648 of the Revised Statutes (31 U.S.C. 529).

"(b) Authority provided by law to place permanent or temporary improvements on lands under section 2233 of this title, or to make contributions for such purpose under such section, may be exercised before title to the land on which the improvement is located (or is to be located) is approved under section 355 of the Revised Statutes (40 U.S.C. 255), and even though the land is held temporarily.".

(2) The table of sections at the beginning of such chapter is amended by adding at the end thereof the following new item:

"2239. Waiver of certain restrictions.".

(c)(1) Clause (1) of section 2232 of such title is amended to read as follows:

"(1) 'State' means any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and each territory and possession of the United States and includes political subdivisions and military units thereof and tax-supported agencies therein.".

(2) Sections 2233(a)(2), 2233(a)(3), 2233(a)(4), 2236(c), 2236(d), and 2237(b) of such title are amended by striking out "or Territory, Puerto Rico, or the District of Columbia".

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(3) Subsections (a) and (b) of section 2236 of such title are amended by striking out "or Territory, Puerto Rico, or the District of Columbia, whichever is concerned,".

(4) Section 2238 of such title is amended by striking out "or Territory" and all that follows and inserting in lieu thereof "or, in the case of the District of Columbia, the commanding general of the National Guard of the District of Columbia.".

(d) Section 2233a of such title is amended—

(1) by striking out "(1)", "(a)", "(b)", and "(2)" and inserting in lieu thereof "(a)", "(1)", "(2)", and "(b)", respectively;

(2) by striking out "or his designee notifies the Senate and the House of Representatives" and inserting in lieu thereof "notifies the Congress"; and

(3) by striking out "where the Senate and the House of Representatives have" and inserting in lieu thereof "when the Congress has".

REQUIREMENT FOR CERTAIN NEW ANNUAL AUTHORIZATIONS OF APPROPRIATIONS RELATING TO MILITARY CONSTRUCTION

SEC. 4. Section 138(f)(1) of title 10, United States Code, is amended by striking out "but excludes" and all that follows and inserting in lieu thereof the following: ", any activity to which section 2808 of this title applies, any activity

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to which chapter 133 of this title applies, and advances to the Secretary of Transportation for the construction of defense access roads under section 210 of title 23. Such term does not include any activity to which section 2806 of this title applies or to which section 2821 of this title applies.".

REPEALER

SEC. 5. The following provisions of law are repealed:

(1) Sections 2212, 2661, 2673, 2674, 2675(d), 2678, 2681, 2682, 2684, 2686, 2688, 4774, and 9774 of title 10, United States Code.

(2) Section 504 of the Act entitled "An Act to authorize certain construction at military and naval installations, and for other purposes", approved September 28, 1951 (31 U.S.C. 723).

(3) Sections 103 and 406(a) of the Act entitled "An Act to authorize certain construction at military installations, and for other purposes", approved August 30, 1957 (42 U.S.C. 1594h and 1594i).

(4) Section 420 of the Military Construction Act of 1959 (Public Law 86–149; 73 Stat. 324).

(5) Sections 501, 503, and 507 of the Act entitled "An Act to authorize certain construction at military installations, and for other purposes", approved July 27, 1962 (42 U.S.C. 1594a–1, 1594h–1, and 1594a–2).

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(6) Section 507 of the Military Construction Authorization Act, 1964 (42 U.S.C. 1594k).

(7) Sections 610 and 611 of the Military Construction Authorization Act, 1966 (Public Law 89–188; 79 Stat. 818).

(8) Sections 610 and 612 of the Military Construction Authorization Act, 1967 (Public Law 89–568; 50 U.S.C. App. 2287; 31 U.S.C. 723a).

(9) Section 610(a) of the Military Construction Authorization Act, 1968 (42 U.S.C. 1594h–2).

(10) Section 807 of the Military Construction Authorization Act, 1969 (Public Law 90–408; 82 Stat. 392).

(11) Section 512 of the Military Construction Authorization Act, 1970 (Public Law 91–142; 83 Stat. 313).

(12) Section 508 of the Military Construction Authorization Act, 1971 (Public Law 91–511; 84 Stat. 1220).

(13) Section 508 of the Military Construction Authorization Act, 1973 (42 U.S.C 1594j–1).

(14) Sections 509 and 612 of the Military Construction Authorization Act, 1975 (Public Law 93–552; 88 Stat. 1759, 1765).

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(15) Section 613 of the Military Construction Authorization Act, 1978 (Public Law 95–82; 91 Stat. 380).

(16) Section 803 of the Military Construction Authorization Act, 1979 (Public Law 95–356; 30 U.S.C. 1002a).

(17) Sections 505 and 808 of the Military Construction Authorization Act, 1981 (Public Law 96–418; 94 Stat. 1765, 1778).

(18) Section 903 of the Military Construction Authorization Act, 1982.

CONFORMING AMENDMENTS TO PROVISION OF TITLE 10 GOVERNING LEASES IN FOREIGN COUNTRIES

SEC. 6. (a) Subsection (a) of section 2675 of title 10, United States Code, is amended to read as follows:

"(a) The Secretary of a military department may acquire by lease in foreign countries structures and real property relating to structures that are needed for military purposes other than for military family housing. A lease under this section may be for a period of up to five years, and the rental for each yearly period may be paid from funds appropriated to that military department for operation and maintenance for that year.".

(b) Subsection (b) of such section is amended—

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(1) by striking out "or any other provision of law"; and

(2) by striking out ", family housing facilities,".

(c) Subsection (c) of such section is repealed.

SAVINGS PROVISIONS

SEC. 7. (a) The Secretary of Defense shall pay to the Commodity Credit Corporation an amount not to exceed $6,000,000 per year until the amount due for foreign currencies used for housing constructed or acquired under title II of the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1721–1726) has been liquidated.

(b) The Secretary of Defense may continue in effect any agreement guaranteeing rental returns to builders or other sponsors of family housing in foreign countries that was made under section 507 of the Military Construction Authorization Act, 1964 (42 U.S.C. 1594k), before the effective date of this Act and may exercise any option of the United States in any such agreement that has not been exercised before such date.

(c) Appropriations available on the effective date of the amendments made by this Act for the purposes of sections 2673 and 2674 of title 10, United States Code, shall after such date be available for the purposes of sections 2806 and 2804, respectively, of such title.

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CODIFICATION OF OTHER PERMANENT PROVISIONS OF LAW

SEC. 8. (a)(1) Chapter 143 of title 10, United States Code, is amended by adding at the end thereof the following new section:

"§ 2422. Contracts for energy or fuel for military installations

"(a) The Secretary of a military department—

"(1) may, subject to subsection (d), contract (A) for the provision and operation of energy production facilities on real property under the Secretary's jurisdiction or on private property, and (B) for the purchase of energy produced from such facilities; and

"(2) may contract for the purchase of fuel derived from waste materials (commonly known as refuse-derived fuel) or fuel derived from other sources.

"(b) A contract under subsection (a)(2) for the purchase of fuel derived from waste materials may provide for the collection and disposal of solid waste from a military installation and for the delivery to that installation of fuel derived from waste materials that exceeds by weight the installation's generation of solid waste.

"(c) A contract may be made under subsection (a) only after—

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"(1) the approval of the proposed contract by the Secretary of Defense; and

"(2) the Committees on Armed Services of the Senate and House of Representatives have been notified of the terms of the proposed contract, including the dollar value of the contract and the amount of energy or fuel to be delivered to the Government under the contract.

"(d) A contract may not be made under this section for the development or purchase of energy resources derived from nuclear or fossil sources.

"(e) Contracts under this section may be made for periods not to exceed 30 years and may be paid from appropriations that would otherwise be available for obligation only within the fiscal year for which appropriated.".

(2) The table of sections at the beginning of such chapter is amended by adding at the end thereof the following new item:

[illegible] "tary installations.".

(b)(1) Chapter 153 of title 10, United States Code, is amended by adding at the end thereof the following new section:

"§ 2577. Disposal of recyclable materials

"(a) The Secretary of a military department may sell recyclable materials in accordance with the procedures pre-

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scribed in section 203 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484) for the sale of surplus property. The proceeds from any such sale shall be credited first, to the cost of collection, handling, and sale of the material (including the cost of any equipment purchased for recycling purposes), and second, to projects for environmental improvement or energy conservation at military installations establishing recycling programs in accordance with regulations approved by the Secretary of Defense.

"(b) The amount spent for environmental improvement and energy conservation projects under this section may not exceed $100,000 at any military installation in any year.

"(c) Any balance of a military department under this section at the end of a fiscal year shall be returned to the Treasury as miscellaneous receipts.

"(d) The Secretary of each military department shall submit a report to Congress each year on the operation of the program provided by this section.".

(2) The table of sections at the beginning of such chapter is amended by adding at the end thereof the following new item:

"2577. Disposal of recyclable materials.".

(c)(1) Chapter 159 of title 10, United States Code, is amended by adding at the end thereof the following new sections:

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"§ 2689. Development of geothermal energy on military lands

"The Secretary of a military department may develop for the use or benefit of the Department of Defense any geothermal energy resource within lands under the Secretary's jurisdiction, including public lands, if that development is in the public interest, as determined by the Secretary concerned, and will not deter commercial development and use of other portions of such resource if offered for leasing.

"§ 2690. Limitation on new boiler plant construction

"(a) Except as provided in subsection (b), a new facility that requires a heat input rate of fifty million British thermal units per hour or more and that uses oil or gas (or a derivative of oil or gas) as fuel may not be constructed on lands under the jurisdiction of a military department.

"(b) The Secretary of the military department concerned may waive the provisions of subsection (a) in rare and unusual cases, but such a waiver may not become effective until after the Secretary has notified the appropriate committees of Congress in writing of the waiver.

"(c) The Secretary of the military department concerned may not provide heating service for a new facility in increments in order to avoid the prohibition contained in subsection (a).".

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(2) The table of sections at the beginning of such chapter is amended by adding at the end thereof the following new items:

"2689. Development of sources of energy on or for military installations.
"2690. Limitation on new boiler plant construction.".

TECHNICAL AND CLERICAL AMENDMENTS

SEC. 9. (a)(1) The table of sections at the beginning of chapter 131 of title 10, United States Code, is amended by striking out the item relating to section 2212.

(2) Section 2388(c) of title 10, United States Code, is amended by striking out "section 4774(d) or 9774(d) of this title, section 529 of title 31, or section 259 or 267 of title 40," and inserting in lieu thereof "section 3648 of the Revised Statutes (31 U.S.C. 529)".

(3) The table of sections at the beginning of chapter 159 of such title is amended by striking out the items relating to sections 2661, 2673, 2674, 2678, 2681, 2682, 2684, 2686, and 2688.

(4) Section 2775(d) of such title is amended by striking out "section 501 of Public Law 87–554 (76 Stat. 236; 42 U.S.C. 1594a–1)" and inserting in lieu thereof "section 2832 of this title".

(5) The table of sections at the beginning of chapter 449 of such title is amended by striking out the item relating to section 4774.

(6) The table of sections at the beginning of chapter 949 of such title is amended by striking out the item relating to section 9774.

(b)(1) Section 305(a) of the Defense Housing and Community Facilities and Services Act of 1951 (42 U.S.C. 1592d(a)) is amended by striking out "sections 1136 and" and inserting in lieu thereof "section".

(2) Section 402(7) of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 5042(7)) is amended by striking out "(without regard to the provisions of section 4774(d) of title 10, United States Code),".

(3) Section 3 of the Act entitled "An Act to assist in the internal development of the Virgin Islands by the undertaking of useful projects therein, and for other purposes", approved December 20, 1944 (48 U.S.C. 1409b), is amended—

(A) by striking out "secs. 1136, as amended, and" and inserting in lieu thereof "section"; and

(B) by striking out "sections 355, as amended, and 1136, as amended," and inserting in lieu thereof "section 355".

(4) The Act entitled "An Act to authorize the Secretary of the Air Force to establish land-based air warning and control installations for the national security, and for other purposes", approved March 30, 1949 (50 U.S.C. 491), is amended by striking out "sections 1136, 3648, 3734, Re-

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vised Statutes" and inserting in lieu thereof "section 3648 of the Revised Statutes (31 U.S.C. 529)".

(5) Section 40 of the Act of August 10, 1956 (31 U.S.C. 649c) is amended by striking out "and the construction of public works".

EFFECTIVE DATE

SEC. 10. (a) The amendments made by this Act shall apply only to military construction projects, and to construction and acquisition of military family housing, first authorized for a fiscal year after fiscal year 1983.

(b) Military construction projects and construction and acquisition of military family housing authorized for a fiscal year before fiscal year 1984 shall be carried out in accordance with the law in effect before the date of the enactment of this Act.

H.R. 5241—MILITARY CONSTRUCTION CODIFICATION ACT

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
MILITARY INSTALLATIONS AND
FACILITIES SUBCOMMITTEE,
Washington, D.C. Friday, March 5, 1982.

The subcommittee met, pursuant to other business, at 10:20 a.m., in room 2118, Rayburn House Office Building, Hon. Jack Brinkley (chairman of the subcommittee) presiding.

Mr. BRINKLEY. This morning we begin consideration of H.R. 5241, a bill to amend Title 10, United States Code, to revise and codify the permanent provisions of law relating to military construction and military family housing.

Without objection H.R. 5241 will be made a part of the record.

An identical bill, S. 1990, was introduced in the Senate on the same day. These bills were prepared as a joint project of the staffs of the Subcommittee on Military Installations and Facilities of the House Armed Services Committee and the Subcommittee on Military Construction of the Senate Armed Services Committee.

A committee print was prepared to facilitate review of these bills by interested offices within the Department of Defense. Basically, these bills will do three things:

First, revise and codify in a new chapter of title 10, United States Code, recurring provisions of the annual military construction authorization bill;

Second, revise and codify in the new chapter permanent provisions of law that have been enacted from time to time in annual Milcon acts, but are not contained in the United States Code; and

Third, transfer related provisions of title 10 to the new chapter so that when this bill is enacted there will be a unified treatment of permanent law for military construction and military family housing.

Naturally, when a significant revision is planned, every effort should be made to assure that a quality product results. Our hearing today is a part of that effort.

First we will hear from Mr. James N. Juliana, Principal Deputy Assistant Secretary of Defense—Manpower, Reserve Affairs and Logistics—who will give us an overview of the Department of Defense assessment of the bill. After this statement, we will furnish questions for the record on the sections with significant revisions.

Mr. Juliana, you may proceed.

STATEMENT OF JAMES N. JULIANA, PRINCIPAL DEPUTY ASSISTANT SECRETARY OF DEFENSE (MANPOWER, RESERVE AFFAIRS AND LOGISTICS)

Mr. JULIANA. Mr. Chairman, I have a prepared statement which I request be included in the record.

Mr. BRINKLEY. Without objection the statement will appear in the record.

Mr. JULIANA. Your professional staff deserves a great deal of credit for taking on such a time consuming and formidable job in an effort to simplify and restructure the preparation of future military construction legislation. The Department of Defense is now in the process of completing an intensive review of the proposed legislation, and we will be providing the committee with our comments and recommendations shortly. As you are aware, we have worked closely with your professional staff in a collaborative action to develop draft legislation similar to H.R. 5241 as now introduced.

This work is aimed toward a proposed new chapter 169 of Title 10, United States Code, that would incorporate in a single law all of the basic and essential authorities and general provisions relating to military construction and family housing. With enactment of this legislation the preparation of annual military construction acts would be shortened and simplified.

We view this as a distinct improvement over previous procedures. We are in total agreement with 20 of the 35 sections proposed for codification, and in substantial agreement with the remainder of the proposal. However, there are several sections specifying cost limitations we would like to see revised in line with limitations contained in this year's military construction authorization bill.

Additionally, the cost variation authority proposed for codification differs significantly from the proposal contained in the fiscal year 1983 Milcon bill. We believe the latter revision is workable and request your favorable consideration of that approach.

The proposed codification of military construction in family housing authority can measurably reduce our workload and that of the committee.

I appreciate the opportunity to express my views. My staff and I are available to discuss any questions you might have on this proposed legislation.

I might add, Mr. Chairman, I understand this has been a project that has been going for the last couple of years, and your staff has taken the lead. It is a job that deserves a lot of credit to your staff. We hope that within the next week to 10 days we will be able to complete our review, and through the day-to-day coordination meet the objectives we are all trying to accomplish here.

WRITTEN STATEMENT OF JAMES N. JULIANA

Mr. Chairman, Members of the Committee: It is a pleasure to appear today to comment on the proposed legislation to codify the basic authorizations and general provisions affecting th military construction and family housing programs.

Your professional staff deserves a great deal of credit for taking on such a time consuming and formidable job in an effort to simplify and restructure the preparation of future military construction legislation. The Department of Defense is now in the process of completing an intensive review of the proposed legislation, and we will be providing the Committee with our comments and recommendations shortly.

As you are aware, we have worked closely with your professional staff in a collaborative action to develop draft legislation similar to H.R. 5241 as now introduced.

This work is aimed toward a proposed new Chapter 169 of Title 10, United States Code that would incorporate in a single law all of the basic and essential authorities and gereral provisions relating to military construction and family housing. With enactment of this legislation the preparation of annual military construction acts would be shortened and simplified. In general, we view it as a distinct improvement over previous procedures and meriting our support.

My remarks today will be pointed toward a short discussion of the primary thrust of the proposed legislation in key areas which we believe are essential to the efficient and cost effective execution of the construction program authorized by the Congress. The first of these are in Subchapter I as Section 2802. "Emergency Construction" and Section 2803, "Contingency Construction."

In these sections the most substantive change is restructuring for greater definition and clarity the emergency authorizations which previously had been repeated annually in each military department's title of the military construction authorization acts. We now have in one piece of permanent legislation standing authority for both emergency and contingency construction. Additionally, the cumbersome five criteria which previously governed use of the emergency authority have been deleted and replaced by a single determination of the Secretary of Defense that deferral of the construction would be inconsistent with the interests of national security. Similarly the dollar limitation on use of the emergency authority (usually $20 million per military service) has been eliminated as unrealistic and unnecessarily restrictive. Such a limit prevents use of the authority for truly critical and unforeseen needs of any real magnitude.

The new language is quite similar to the authority provided for emergency restoration of facilities damaged or destroyed, in that its use is limited in essence by the amounts which might be available by reprogramming, once a valid and urgent requirement has been certified. Execution of the authority is limited by the necessity to notify the appropriate Committees of Congress and await either their individual approvals or the expiration of a 15-day waiting period.

Section 2804 "Minor Construction" was substantially restructured in last year's legislation and the product reflected in the proposed legislation should lighten the load of program review and oversight by the Committee. We are in substantial agreement with the proposal.

Section 2805 "Contributions for North Atlantic Treaty Organization Infrastructure"is a new section permanently codifying the authority of the Secretary of Defense to make annual contributions to that essential program as authorized by the Congress. A major improvement in last year's legislation was inclusion of flexibility permitting increases in our contribution up to 25 percent with the approval of the appropriate Committee concerned. Given the changing character of European defense strategies and the pervasive nature of inflation in many of the NATO countries, such authority is vital to our participation in common defense construction in those areas.

Section 2807 "Authorized cost variations for military construction projects" has been substantially simplified over the previous legislation. The proposed section eliminates previous limitations on increases to an installation total which have become increasingly obstructive and unworkable with the inflationary trends in construction costs in recent years. Now the proposed section simply addresses the primary matter of interest to the Committee; that is, cost increases of individual projects which exceed an accepted norm. However, the revision differs from the proposal contained in this year's Military Construction Authorization Bill. We believe the latter revision is workable, and request your favorable consideration of that approach.

The remaining sections of Subchapter I are essentially codification of existing law having to do with advance planning, restoration of damaged or destroyed facilities, and war time or national emergency construction authority provided to the Secretary of Defense. However, I would like to comment on the threshold amount for architect-engineer contracts requiring notification of the Committees before award, contained in Section 2808. This amount is now $250,000. In recognition of the increasing cost of construction and the corollary increase in design fees, we recommend this threshold be increased to $500,000.

The following Subchapter II of the codification titled "Military Family Housing" encompasses all the basic authorities and limiting provisions pertaining to that program. Generally, we concur with the draft structure of this subchapter although there are instances where we would like to increase dollar limitations on lease costs and improvement to existing family housing units.

Section 2855 limits the size and cost per square foot of unaccompained personnel housing. As presently drafted the section would impose specific square foot cost limits. Unless one is willing to assume that current costs will remain static, and recent history certainly belies this, it will be necessary to amend this section on an annual basis to refect cost increases. We believe it would be more efficient to provide language specifying that the Secretary of Defense would determine a reasonable and appropriate cost for such facilities in preparing the annual construction request, and be prepared to provide the justification for such a determination during Congressional hearings.

Finally, I believe some comment is merited with respect to Section 2859 which deals with submission of an annual report to Congress on military construction. The requirements of that section would bring together a comprehensive report on military construction and family housing which should materially assist the Congress in maintaining oversight. It would include in a single package to be submitted to Congress on January 15 each year a wide spectrum of progress, information, and summary performance reports covering work authorized in the current and prior fiscal years and would include data on minor and major military construction as well as family housing. Wisely used it should be a valuable aid both to the Congress and the Department in conducting management analyses of various program elements, and determing the efficiency of existing program techniques.

Gentlemen, that concludes my comments on the proposed codification of military construction and family housing now before you. This effort can measurably reduce our workload and that of the Committee, as well as improve your oversight of the program authorized. I appreciate the opportunity to express my views, and my staff and I are available to discuss any question you may have on this proposed legislation.

Thank you.

Mr. BRINKLEY. Thank you very much.

I think we are in the same flow toward achieving the objectives set forth in this bill. The Senate and the House are working very closely together on it, and our staffs have done a good job and I know that they have had the counsel and advice of your people. We will continue to work together and look forward to enactment of the bill as refined and polished by our mutual efforts toward the best vehicle to effect the law.

Mr. Trible.

Mr. TRIBLE. Mr. Chairman, I will simply say that I certainly associate myself with your remarks. I am pleased this bill has been put forward and I look forward to working with our friends in the administration in perfecting that measure and moving ahead.

Mr. BRINKLEY. Mr. Bennett.

Mr. BENNETT. No questions.

Mr. BRINKLEY. Mr. Dougherty.

Mr. DOUGHERTY. No questions.

Mr. BRINKLEY. Mr. Juliana, we thank you very much for being with us this morning. We thank Mr. Bob Stone for being here. We are impressed with the members who represent the various branches of the services who are with you, as well as other backup witnesses.

We are going to have good hearings this year and we are going to all try to do that which is in the best interests of this great and good country that all of us represent.

Mr. JULIANA. Thank you, Mr. Chairman. I assure you of our complete support and cooperation. We will respond to those questions very promptly for the record.

Mr. BRINKLEY. Thank you very much.

[The following questions were submitted to the witness to be answered for the record:]

2802 MILITARY CONSTRUCTION PROJECTS

Question. Under Subchapter I—Military Construction, Section 2801, Military Construction Projects; Section 2801 is practically the same as the DoD draft except for the substitution of the phrase "integral to the construction" for "incident to the construction." Will this change pose any problems for the Department of Defense and Military Departments in executing construction of an approved project?

Answer. We see no difference in the restrictions implied by the phrases "incident to the construction" and "integral to the construction." Accordingly, we would treat these phrases equally in executing the construction of an approved project. The substitution referred to, therefore, will not pose problems to the Department of Defense and the Military Departments.

2805. MINOR CONSTRUCTION

Question. (a) Provide for the record for the past three years the number of projects approved by Congress in the $100,000 to $1 million range and what percentage this represented of the total program in terms of the number of projects and dollar amount. Compute an average for the last three years.

(b) How many of these projects were in the range of $750,000 to $1 million?

(c) Of the projects placed under contract on the $750,000 to $1 million range, how many required a cost variation waiver in excess of $1,250,000?

PROJECTS APPROVED BY CONGRESS IN THE $100,000 to $1,000,000 RANGE

Fiscal Year	$100,000 to $1,000,000		Percentage of total program	
	Number	Dollars in millions	Number	Dollars
1980	305	141	45	7
1981	279	146	41	5
1982	253	137	32	3
Average	279	141	39	5

Number of projects in the $750,000 to $1,000,000 range

Fiscal year:	*Number*
1980	58
1981	68
1982	51
Total	177

Number of projects in the $750,000 to $1,000,000 range which required cost variation in excess of $1,250,000

Fiscal year:	*Number*
1980	1
1981	0
1982	0
Total	1

Question. One of the purposes for codification is to provide increased flexibility to the military departments in their management of military construction and family housing.

(a) Do the provisions for minor construction provide this flexibility?

(b) If you have changes to suggest, please state them with a brief explanation of the reasons the changes are needed.

Answer. The codification proposal is an improvement but we believe additional changes should be made to provide the necessary flexibility, speed up the process, and reduce unnecessary paperwork thereby allowing minor construction projects to be accomplished more efficiently and effectively.

The changes necessary are contained in Section 801 of the draft Military Construction Authorization Bill for fiscal year 1983. Section 801 would amend the minor

construction authority to eliminate the reporting of cost variations. We believe that the Military Departments and Heads of the Defense Agencies should be responsible for managing the minor construction program and that they can be trusted to execute these projects in the best interest of the United States.

In conclusion, we recommend that codification legislation be revised to reflect our recommendations as contained in the draft fiscal year 1983 Military Construction Authorization Bill.

2806. CONTRIBUTION FOR NORTH ATLANTIC TREATY ORGANIZATION

Question. What is the history of and expected annual expenditure under this section?

Contributions for NATO Infrastructure Program

	Millions
Expenditure history:	
1968–76 (average)	$53
1977	90
1978	95
1979	158
1980	183
1981	319
Projected expenditure:	
1982	345
1983	375
1984	390
1985	420
1986	420
1987	420

2808. AUTHORIZED COST VARIATIONS FOR MILITARY CONSTRUCTION PROJECTS

Question. Provide for the record by military departments the number of cost variation reports and reprogrammings submitted to the appropriate committees of Congress during fiscal years 1980 and 1981. Provide a separate listing for the cost variation reports and the reprogramings, but with a cross indexing for the same projects. For each listing, provide a breakdown by authorized and appropriated project amount as follows:

Less than $500,000;
Less than 500,000 to $1,000,000;
Less than 1,000,000 to 5,000,000;
Less than 5,000,000 to 10,000,000;
Less than 10,000,000 to 50,000,000;
Less than 50,000,000 to 100,000,000;
Greater than 100,000,000.

Answer. The information requested is provided on the attached chart.

2808. AUTHORIZED COST VARIATIONS FOR MILITARY CONSTRUCTION PROJECTS

Question. H.R. 5241 provisions provide greater oversight for larger dollar amount projects than exists under current cost variation provisions. Will these more restrictive provisions materially impact on construction execution?

Answer. These restrictive provisions will materially impact on construction execution. It will require that more projects be reviewed by the Congress than the current cost variation procedures require, will require Secretary of Defense review and approval whereas we currently recommend that this authority be delegated to the Services, and it will add substantial administrative overhead to the management of Military construction.

2809. ADVANCE PLANNING, CONSTRUCTION DESIGN AND ARCHITECT AND ENGINEERING SERVICES

Question. For planning and design, provide for the record by Military Departments the amounts appropriated for and obligated during fiscal years 1980 and 1981. Provide, also, the amounts received from foreign governments and other agencies.

Answer. Amounts shown in the following table are in millions of dollars and have been rounded off to the nearest one-tenth million.

	Army [1]	Navy [2]	Air Force[3]
1980:			
Appropriated Reg. MILCON	50.7	56.0	44.0
Supplemental Appropriations	1.0	14.0	7.0
Total Appropriation	51.7	70.0	51.0
Obligated	65.1	61.1	42.9
1981:			
Appropriated Reg. MILCON	75.0	63.8	139.4
Supplemental Appropriations	28.4	23.2	35.0
Total Appropriations	103.4	87.0	174.4
Obligated	94.9	84.2	94.8

[1] $14.4 million provided to Army by reprograming late in fiscal year 1980. $8.8 million unobligated balance at end of fiscal year 1981 for carryover into fiscal year 1982.
[2] Approximately $16 million remained unobligated in the Navy Account at the end of fiscal year 1981 for carryover into fiscal year 1982.
[3] Fiscal year 1980 obligations corrected from last year's estimate of $53.7 million. $92 million of MX Planning and Design funds not spent because of Congressional direction to hold pending future decisions on MX deployment.

Amounts received from foreign governments, states and local governments for services are not reported to or maintained at Washington Headquarters. They are separate from Military Construction planning and design as civil works efforts are also separate. We will be pleased to query all field offices for such information if the Committee requires it but we request a period of approximately 90 days in which to assemble and forward it to the Committee.

Question. Continuing authority of 31 USC 723 was previously used for appropriating funds annually for planning and design. H.R. 5241 requires annual authorization of planning and design funds. Will this change impact on military construction budgeting or construction execution?

Answer. Yes. The Congress recognized that construction cannot take place until the plans and specifications are prepared. Planning and design must precede construction and, since it must, reauthorization for planning and design appropriations each year is an unnecessary administrative burden.

The purpose of H.R. 5241 is understood to be the simplification and streamlining of the planning, authorization, appropriation and execution process. This proposal has the opposite effect. It would eliminate a well-founded procedure which has been in effect and worked well for many years.

Question. Provide for the record a chronological comparison of the threshold amount for notifying Armed Services Committees of planned architect-engineer contracts and the rise in construction cost using an industry standard construction cost index.

Answer. The following table displays the Engineering News record (McGraw-Hill Co.) Building Cost Index. The notification threshold was first established in 1966 at $150,000. It was revised to $225,000 in 1974 and to $250,000 in 1978.

	Building cost index	Increase (650 – 1)	Notification threshold
Year:			
1966	650	1.00	$150,000
1967	672	1.03	150,000
1968	721	1.11	150,000
1969	790	1.22	150,000
1970	836	1.29	150,000
1971	948	1.46	150,000
1972	1048	1.61	150,000
1973	1138	1.75	150,000
1974	1204	1.85	225,000
1975	1306	2.01	225,000
1976	1425	2.19	225,000
1977	1545	2.38	225,000
1978	1674	2.58	250,000
1979	1828	2.81	250,000
1980	1962	3.02	250,000
1981	2096	3.22	250,000

The March 1982 Engineering News Record Building Cost Index is 2194, a factor of 3.38 times the 1966 index. An equivalent threshold for notifying the Armed Services Committees now would be $507,000.

2801. DEFINITIONS

Question. (a) H.R. 5241 uses the definition previously used for minor construction projects to define all military construction projects. Will this universal definition create any military construction budgeting or execution problems?

(b) If so define the problems, the reasons for the problems and changes suggested to correct the problems.

Answer. Section 2810, "Definitions" describes a military construction project as a "*single undertaking* at a military installation that includes all construction work, land acquisition, *and installation of equipment* necessary *to accomplish a specific purpose and* to produce a *complete and usable* facility or a *complete and usable* improvement to an existing facility." (Emphasis added.)

This description is considered to be unnecessarily narrow and restrictive in its wording, and its application in the strictest terms of its definition could severely complicate budgeting and execution of a number of projects.

The most troubling and restrictive phrases are those defining a project as a "single undertaking", "and installation of equipment," "to accomplish a specific purpose" and finally a "complete and usable facility".

Rapidly expanding military technology has served to create weapon systems and other facility needs which because of their complexity and magnitude frequently require construction of a "family" of structures which may be of completely different functional use separately, but which in toto are all necessary to the successful functioning of the system as a whole. Examples are Trident bases where an extensive number of separate structures with separate functional purposes are necessary to accomplish the end objective of an operating base for Trident submarines. Another example would be the Aeropropulsion Systems Test Facility at Arnold Engineering Development Center, Tennessee where fourteen separate structures on 57 acres of land are necessary to produce the functioning ASTF.

It is obvious that neither of these examples could be adequately described as a "single undertaking".

Similarly in both of these examples "installation of equipment" is not necessarily included in the military construction project, nor is it necessarily procured or installed with military construction appropriations. In cases of equipment which may be of a specialized or complex nature it is common to procure and install such equipment from a different appropriation; i.e. O&M, RDT&E, etc., with the procurement source being responsible for the installation and test of the specialized equipment as a part of the procurement contract. Computer equipment is an example where this is a more or less standard procedure.

Finally, the term "complete and usable facility" also can be a misleading and restrictive definition in that it implies that the project which is being authorized and funded within the military construction authorization and appropriation programs,

will in fact be complete and usuable for its functional purpose upon completion of the physical structure.

In the cases cited above as well as many other instances, completion of the military construction project envelope or structure does not in all cases insure a complete and usable facility. That condition is achieved only after the necessary technical or mechanical equipment, in many instances under separate contract and funding, has been installed, connected and tested.

The Department of Defense would recommend alternative language which is less narrowly restrictive but which would adequately describe the objective of the proposed project. That alternative would read as follows:

(a) "A military construction project includes all construction work and land acquisition necessary to produce a facility or an improvement to an existing facility."

MILITARY FAMILY HOUSING—GENERAL

Question. The Department of Defense draft of the fiscal year 1983 military construction authorization bill (H.R. 5561) proposes to decentralize the administration of family housing. Provide the rationale for this proposal and the advantages and disadvantages from the standpoint of the military departments the Department of Defense and the Congress.

Answer. Decentralizing the administration of military family housing will enable each military department to plan its family housing program, to determine the resources required, to budget those resources from its total obligational authority, and to execute its program. The clear advantage of this decentalization is that each Service Secretary will be responsible for his family housing program, and will be able to devote the resources he feels are necessary for family housing within the priorities he establishes for military construction. The Congress will now be able to consider a service's total military construction program, including family housing.

2823. DETERMINATION OF AVAILABILITY OF SUITABLE PRIVATE HOUSING FOR ACQUISITION IN LIEU OF CONSTRUCTION OF NEW FAMILY HOUSING

Question. There are differences in the provisions of this section and similar sections of H.R. 5561. Explain the differences in these sections and provide justification for the additions or deletions.

Answer. The intent of both sections is to obtain agreement between the Secretaries of Defense and Housing and Urban Development on the availability of suitable private housing at locations authorized for construction of new military family housing. Section 2823 of H.R. 5241 requires that the Secretary of Housing and Urban Development advise the Secretary of Defense as to the availability of housing with 30 days of being requested for such advice. The stated time provides a reasonable limit for the rendering of such advice. The subsection concerning notification of Congress provides a 30 day period for Congressional action, vice the 15 day period proposed in H.R. 5561. The next subsection provides for the acquisition of private housing should the Secretaries agree that suitable private housing is available. Additionally, the term "suitable private housing" is defined for clarity in H.R. 5241.

2824. AUTHORIZATION OF ACQUISITION OF EXISTING FAMILY HOUSING IN LIEU OF CONSTRUCTION

Question. Subsection (c) prohibits the acquisition of existing family housing in lieu of construction through the exercise of eminent domain authority. Will prohibiting the use of eminent domain authority result in cases of new construction where acquisition of existing family housing may have been the lower cost alternative?

Answer. No. Acquisition of family housing through the exercise of eminent domain authority has been prohibited in previous Military Family Housing titles. We will still be able to acquire existing housing from willing sellers in lieu of new construction, where it is economically advantageous.

2825. AUTHORIZED COST VARIATION

Question. In H.R. 5561, fiscal year 1983 military construction authorization bill, cost variation for family housing is the same as cost variation for other military construction. Explain the need for the same cost variation provisions for family housing as those proposed for other military construction projects.

Answer. The cost variation authority provided by the Congress to the Department of Defense permits the Services to meet unusual conditions encountered in the execution of Military Construction that could not have been anticipated at the time the project estimate was submitted to Congress. Family Housing construction is

equally subject to unusual conditions that may change the project costs from the time of budget submittal to the time of contract award. Some of these unusual conditions are common to both Military Construction and family housing such as unanticipated inflation, saturated construction markets, and unforeseen subsurface site conditions. Other unusual conditions are unique to family housing. These include changed local government laws that dictate new siting restrictions and additional costs and local government adjustments in the cost of utility connections or the shared cost of new utility construction. Other unusual conditions include the phenomenon that in many cases, prime land has already been used for other projects and that the land available for family housing is generally submarginal. This is a factor in making it difficult to accurately estimate construction costs. The scope of a family housing project is far greater than most military construction projects. This greater scope makes the project far more vulnerable to unforeseen conditions and additional cost than the normal military construction project.

2826. IMPROVEMENTS TO FAMILY HOUSING UNITS, COST LIMITATIONS

Question. Subsection (b) proposes an improvement threshold amount of $20,000 per unit. H.R. 5561 proposes increasing the limit to $30,000 per unit. Provide for the record a history of the changes in the improvement threshold amount.

Answer. Section 610(a) of P.L. 90-110, October 21, 1967 required specific authorization by law for expenditure in excess of $10,000 for the repair and improvement of a single family housing unit.

Section 506 of Public Law 93-166, November 29, 1973 amended section 610(a), Public Law 90-110 to read $15,000 rather than $10,000.

Section 502(b) of Public Law 95-356, September 8, 1978 amended section 610(a) Public Law 90-110 to read $20,000 rather than $15,000.

Section 502(b) of Public Law 96-418, October 10, 1980, amended Section 610(a) Public Law 90-110 to include the area cost index as an adjustment factor to the $20,000 limitation.

Based on this historical record, justify the 50 percent increase proposed.

Answer. The new amount is based on inflation experienced in military construction since the fiscal year 1978 threshold of $20,000 per unit was enacted.

Question. Under current inflation, how frequent would there be requests to revise a codified improvement threshold amount?

Answer. New threshold amounts for improvements might be proposed annually, similar to increases in the cost of newly constructed military family housing, by the amount of significant inflation experienced in military construction.

2827. LIMITATIONS ON SPACE BY PAY GRADE

Question. In the table which establishes net floor area by pay grade by number of bedrooms, the same net floor areas are allowed for two and five bedroom units for pay grades 0-1 through 0-3, E-7 through E-9, and E-1 through E-6. However, for three and four bedroom units, pay grades E-1 through E-6 have reductions of 150 square feet and 100 square feet, respectively, when compared with net floor areas allowed for pay grades 0-1 through 0-3 and E-7 through E-9. What is the justification for these differences?

Answer. There are no "reductions" in the table in Section 2827. The allowable net floor areas are exactly the same as those established by the Congress in Section 2684(a), P.L. 93-166, Nov. 29, 1973 (10 USC 2684) in order to consolidate area limitations then listed separately for each Military Department. Chapter 449, 10 USC Section 4774; Chapter 649, 10 USC, Section 7574 and 7575; and Chapter 949, 10 USC Section 9774 (70 Stat. 269, 468 and 590) were repealed by Sections 2684(c), (d) and (e) respectively of P.L. 93-166.

Prior to that time the Congress had set limitations on areas which were smaller for all types of enlisted personnel housing than for similar types of officer personnel housing. The Department of Defense proposed an increase of 120 square feet for an enlisted 3-bedroom unit; an increase of 50 square feet for a 4-bedroom company grade officer unit; and an increase in all units for E-7-E-9 enlisted personnel to make them the same size as junior officer units of the same number of bedrooms. Thus, all units stayed the same or were increased in size. No reductions occurred. The increase permitted better design of dining areas, secondary bedrooms, baths, circulation and storage areas. (Page 574, Hearings, Subcommittee #5, Committee on Armed Services, House of Representatives, HASC No. 93-18). The Senate (page 50, Report 93-389) found these proposals would "allow appropriate but selective and moderate increases. . ." The House, however, (page 59, Report 93-534) found the increases to be minor and denied them. Although not addressed in the Conference

DEPARTMENT OF DEFENSE COST VARIATION REPORTS AND REPROGRAMING ACTIONS

[Fiscal years 1980 and 1981]

Authorized-Appropriated	Army						Navy						Air Force					
	Fiscal year 1980			Fiscal year 1981			Fiscal year 1980			Fiscal year 1981			Fiscal year 1980			Fiscal year 1981		
	CVR	RA	CVR/RA	CVR	RA	CVR/RA	CVR	RA	CVR/RA	CVR	RA	CVR/RA	CVR	RA	CVR/RA	CVR	RA	CVR/RA
Less than $500,000	1	1	1													1		
$500,000 to $1,000,000	6	4	4	3	5	3	3	6	3		2		2	3	2	2	3	2
$1,000,000 to $5,000,000	13	11	10	6	7	6	6	8	6	2	3	1	6	9	6	7	6	2
$5,000,000 to $10,000,000	4	3		5	5	5	4	4	4	3	2	1	2	2	2	7	7	5
$10,000,000 to $50,000,000	5	7	4	4	6	4	1	1	1	6	5	5	1	3			1	
$50,000,000 to $100,000,000					1												1	
Greater than $100,000,000		1											1	1	1		2	
Total	29	27	19	18	24	18	14	19	14	11	12	7	12	18	11	17	20	9

Legend: CVR A Cost Variation Report submitted by the Services for cost growth in excess of the program amount of the project by 25 percent or more, or when the station total has been exceeded by 5 percent in the CONUS or 10 percent overseas. This statistic does not include reports from the Defense Agencies or reports where the scope was reduced by more than 25 percent.

RA: A reprograming action for cost growth, emergency construction, restoration or replacement or reinstatement of previously appropriated funds. Does not include Guard or Reserve projects.

CVR/RA: Cost Variation Report and reprograming action concurrently applicable to a project.

report the new limits were contained in the final bill which became P.L. 93-166 and have been permanent legislation since then.

Question. Under the current backlog of new construction requirements, will significant cost savings result from these reductions?

Answer. Yes, for the fiscal year 1983 request alone, savings in the construction of units sized for junior enlisted personnel are about $2.5 million, or almost $9,000 per unit. For the total new construction requirement, savings would probably exceed $50 million, in fiscal year 1983 constant dollars.

Question. Is flexibility in assignment of personnel impacted by these space reductions?

Answer. No. Department of Defense assignment policy permits occupancy by pay grade categories other than those for which the housing was built in order to assure full utilization of the housing.

2829. LEASING OF MILITARY FAMILY HOUSING

Question. Subsection (b) proposes a leasing ceiling within the United States, Puerto Rico and Guam of 10,000 units with 9,500 of the units limited to a monthly lease amount of $515/month. The monthly lease amount for the remaining 500 units is limited to less than $600/month. Provide for fiscal years 1980 and 1981 by military departments/agencies, the number of military family housing units leased, the high and low lease amounts and the distribution of lease costs as a percent of a maximum lease cost of $600/month.

Answer.

Fiscal year and Military Department	Range		Leases		
	Percent	Dollars/Month	Number	Percent	Cumulative percent
1980: Navy	Less than 60	Less than 360	1,420	94	94
	60 to 70	361 to 420	70	5	99
	70 to 80	421 to 480	20	1	100
	80 to 90	481 to 540	0	0	100
	90 to 100	541 to 600	0	0	100
Total			1,510		
Lowest 205, Highest 475					
1981: Navy	Less than 60	Less than 360	440	80	80
	60 to 70	361 to 420	97	17	97
	70 to 80	421 to 480	14	3	100
	80 to 90	481 to 540	1	0	100
	90 to 100	541 to 600	0	0	100
Total			552		
Lowest 275, Highest 490					

The Defense Agencies do not have domestic leasing programs.

Fiscal year and Military Department	Dollars/Month	Domestic Leases			
		Number	Percent	Cumulative	
				Number	Percent
1980: Army	Less than 300	659	35	659	35
	301-400	1,141	61	1,800	96
	401-500	76	4	1,876	100
Total	1	1,876			
Lowest $260, Highest $475					
1981	Less than 300	104	10	104	10
	301-400	793	76	897	86
	401-500	146	14	1,043	100
Total	1	1,043			

Fiscal year and Military Department	Dollars/Month	Domestic Leases			
		Number	Percent	Cumulative	
				Number	Percent
Lowest $287, Highest $515					

Fiscal year and Military Department	Range		Leases		
	Percent	Dollars/Month	Number	Percent	Cumulative percent
1980: Air Force	Less than 60	Less than 360	973	68.0	68.0
	60 to 70	361 to 420	254	17.7	85.7
	70 to 80	421 to 480	193	13.5	99.2
	80 to 90	481 to 540	9	.5	99.7
	90 to 100	541 to 600	5	.3	100.0
Total			1434		
Lowest $225.00, Highest $599.00					
1981: Air Force	Less than 60	Less than 360	592	47.5	47.5
	60 to 70	361 to 420	298	23.9	71.5
	70 to 80	421 to 480	208	16.7	88.2
	80 to 90	481 to 540	79	6.3	94.5
	90 to 100	541 to 600	69	5.5	100.0
Total			1246		
Lowest $240.00, Highest $595.00					

Question. Provide a history of the statutory maximum lease cost for family housing in the United States, Puerto Rico, and Guam for the last 10 years.

Answer.

	United States, Puerto Rico	Hawaii, Alaska, Guam [1]
	Monthly maximum	Monthly maximum
Fiscal year:		
1973	290	300
1974	290	300
1975	310	365
1976	325	385
1977	450	450
1978	450	450
1979	475	475
1980	475	475
1981	600	
1982	600	
1983	600	

[1] Monthly costs pertain to Hawaii in all years, Alaska since fiscal year 1976, and Guam since fiscal year 1977. These areas were included with other domestic leasing areas commencing in fiscal year 1981.

Question. Provide for fiscal years 1980 and 1981 by military department/agency the number of units rented, the high and low cost per unit per month and the distribution of rental costs as a percent of a maximum cost of $1,115 per month.

Answer. (a).

Fiscal year and Military Department	Range		Leases		
	Percent	Dollars/Month	Number	Percent	Cumulative percent
1980: Navy	Less than 60	Less than 669	655	87	87
	60 to 70	670 to 780	33	4	91
	70 to 80	780 to 892	36	5	96
	80 to 90	892 to 1,003	4	1	97
	90 to 100	1,003 to 1,115	0	0	97
		Over 1,115	21	3	100
Total			749		
Lowest 377, Highest 2,492.					
1981: Navy	Less than 60	Less than 669	583	80	75
	60 to 70	669 to 780	88	11	86
	70 to 80	780 to 892	53	7	93
	80 to 90	892 to 1003	26	3	96
	90 to 100	1003 to 1115	5	1	97
		Over 1,115	21	3	100
Total			776		
Lowest 321, Highest 2,772					

Fiscal year and Military Department	Dollars/Month	Number	Percent	Cumulative	Percent
1980: Army	Less than 500	4,893	58	4,893	58
	501–550	928	11	5,821	69
	551–600	844	10	6,665	79
	601–115	1,772	21	8,437	100
Total		8,437			
Lowest $240.75, Highest $927.75					
1981: Army	Less than 500	4,849	52	4,849	52
	501–550	1,026	11	5,875	63
	551–600	1,399	15	7,274	78
	601–1,115	2,052	22	9,326	100
Total		9,326			
Lowest $240.75, Highest $947.50.					

Fiscal year and Military Department	Range		Leases		
	Percent	Dollars/Month	Number	Percent	Cumulative Percent
1980: Air Force	Less than 60	Less than 669	2,695	75.8	75.8
	60 to 70	670 to 780	863	24.0	99.8
	70 to 80	780 to 892	4	.1	99.9
	80 to 90	892 to 1,003	2	0	99.9
	90 to 100	1,003 to 1,115	0	.1	100.0
		Over 1,115	5		
Total			3,569		
Lowest $298.00, Highest $2,690.55.					
1981: Air Force	Less than 60	Less than 669	1,981	47.3	
	60 to 70	669 to 780	1,235	29.5	76.8
	70 to 80	780 to 892	956	22.8	99.7
	80 to 90	892 to 1,003	4	.1	99.8
	90 to 100	1,003 to 1,115	6	.1	99.9
		Over 1,115	5	.1	100.0
Total			4,187		

Fiscal year and Military Department	Range		Leases		
	Percent	Dollars/Month	Number	Percent	Cumulative Percent
Lowest $335.00, Highest $3,018.55					

Fiscal year and Military Department	Range		Leases		
	Percent	Dollars/Month	Number	Percent	Cumulative Percent
1980: DIA	Less than 60	Less than 669	49	22.8	22.8
	60 to 70	670 to 780	14	06.5	29.3
	70 to 80	780 to 892	29	13.5	42.8
	80 to 90	892 to 1,003	19	8.8	51.6
	90 to 100	1,003 to 1,115	18	8.4	60.0
		Over 1,115	86	40.0	100.0
Total			215	100.0	
Lowest $347.00, Highest $6,896.00.					
1981: DIA	Less than 60	Less than 669	29	13.2	13.2
	60 to 70	669 to 780	47	21.5	34.7
	70 to 80	780 to 982	19	8.7	43.4
	80 to 90	892 to 1,003	23	10.5	53.9
	90 to 100	1,003 to 1,115	15	6.9	60.8
		Over 1,115	86	39.2	100.0
Total			219	100.0	
Lowest $414.00, Highest $6,896.00					

Explain the need to raise the ceiling from $1,115 to $1,400 per unit per month.

Answer. The requested ceiling is based on projections by the military departments and defense agencies of the monthly cost needed so that the number of high cost leases would not increase. With a $1,400 per unit per month ceiling, we will not need an increase in high cost units.

Question. Explain the need to increase the number of rental units from 22,000 to 29,000.

Answer. An increase in the number of leased family housing units is requested to provide suitable housing to our military people overseas who are unable to locate suitable housing in the private community. The increase is primarily to accommodate requirements in Europe.

Question. Since the change from 22,000 to 29,000 is an increase of 32 percent, what confidence do you have in codifying a ceiling for the military departments/agencies to the units level.

Answer. This increase is based on Service-identified requirements. Increases to the ceiling may be requested as requirements are refined by the Services and Agencies, and the most economically advantageous alternatives (e.g. leasing, military construction, etc.) are determined.

Question. How often could a need arise to change the assigned ceilings for the military department/agencies?

Answer. The need to change the maximum dollar per unit per month ceiling could arise annually; based on the Service's ability to satisfy their overseas housing requirements.

2854. LIMITATIONS ON SIZE AND COST OF BARRACKS

Question. Section 2855 limitations on size of permanent barracks and on cost per square foot of permanent barracks and unaccompanied officer quarters.

(a) For a barracks built entirely for a population of E–2 to E–4 personnel, the gross square feet allowed under H.R. 5241 would be 6 percent less than that allowed by DOD draft. What impact would this reduction have on the facilities built?

Answer. The Department of Defense criteria for E–2 to E–4 quarters has been 90 net square feet of living space per person. To the net square feet of living area must be added such items as the thickness of walls, corridors, stairwells, mechanical

equipment rooms, common areas such as laundries if provided and bathrooms. Experience indicated that 160 to 165 gross square feet was required to produce a reasonable design under former standards of energy conservation. In the late 1970s energy conservation became a much higher priority with the Department of Defense since the cost of heating and cooling fuels escalated rapidly. To offset these increasing fuel costs our designs were reviewed to find ways of reducing the amount of fuel used. Adding insulation to walls was one very cost effective way to reduce fuel use but it did require that we build thicker walls, therefore, we raised our standard to 170 gross square feet per person from our previous 165. If it is now desired to write a gross square foot limitation into law, it should be at least the 170 square feet that will permit energy efficient design in most cases without reducing the very minimal area in which our personnel are forced to live. Any such reduction would probably have an adverse affect on morale, recruitment and retention.

In our opinion the gross square foot to net square foot ratio should not be a matter of law. Rather, it is a variable to be determined by many factors including the capacity of the building, the limitations of the site, climate, weather, seismic zone and all the other variables with which the Architect and Engineer have to deal. Both the figures in Section 2855 and those proposed in the DOD Draft of 1979 are now seen to be inappropriate to permanent law. Further, they are unnecessary as the Congress is provided with a complete description and estimated cost of each project when authorization and funding are requested. Additional arbitrary limitations should not be imposed.

2860. ANNUAL REPORT TO CONGRESS

In the Department of Defense Sectional Analysis on Military Construction Codification, the section on Reports to Congress stated that an annual report would include:

(a) percentage of authorization funded;

(b) percentage of resulting in completed construction;

(c) comparison of cost of completed construction with authorized cost in percent;

(d) percentage completed;

(e) percentage still active;

(f) percentage not to be started;

(g) estimated cost for construction not started;

(h) list of cancelled projects with the reasons therefore;

(i) list of projects not started in the second fiscal year prior to the current fiscal year and earlier prior fiscal years with the reasons therefore; and

(j) the construction overhead rate used during the reported fiscal year.

For the record, supply for fiscal year 1981 the data for items (a) through (j) above, limit data to fiscal years 1980 and 1981.

Answer.

(a) 94.5 percent.

(b) 2.9 percent of the number of projects;

(c) $12.1 million of fiscal year 1981 MILCON was completed in fiscal year 1981 against line item entries totalling $2,452 million.

(d) 0.5 percent.

(e) 98.7 percent.

(f) 0.8 percent.

(g) $404.6 million.

(h) Fiscal year 1981 projects cancelled:

Anniston Ammunitions depot, landfill chemical waste, $1.1 million, off-site disposal found to be more economical.

Holston Army Ammunition Plant, contaminated waste incinerator, $2.1 million, State standards were relaxed, no longer required.

Holston Army Ammunition Plant, explosive waste incinerator, $1.9 million, relaxation of State standards.

Milan Army Ammunition Plant, contaminated waste incinerator, $2.1 million, relaxation of State standards.

Panama, Dental Clinic, $2.7 million, cancelled by Surgeon General.

Volunteer Army Ammunition Plant, contaminated waste incinerator, $2.2 million, relaxation of State standards.

McAlester Army Ammunition Plant, contaminated waste incinerator, $2.2 million, relaxation of State standards.

Germany, barracks facility, $5.8 million, cancelled by user.

(i) Fiscal year 1979 and earlier MILCON projects not started.

(1979 MILCON) Fitzsimmons Army Medical Center, Energy Control System, $1.4 million. Project delayed while status of hospital was in doubt. (June 1982 award projected.)

(1979 MILCON) Ft. Stewart, Regional Sewer System. $5.5 million. EPA and local funding issues have delayed this project.

(1979) NAS Jacksonville—Energy Monitoring Control System, $0.8 million. Project under redesign in accordance with new criteria. Award date July 1982.

(1978) NSY Long Beach, CA—Municipal Sewer Connection, $2.1 million, Negotitations with community produced no results due to inadequate service and excessive cost. Award indefinite.

(1976) NAS Brunswick, ME—Regional Solid Waste Disposal, $0.1 million. Awaiting community decision and action on landfill, award indefinite.

(1976) NOS Indian Head, MD—Missile Propulsion Unit Reclamation Facility, $2.5 million. State of art design was excessive in cost. If problems are resolved, project will be awarded Jan 83.

(1979) Rickenbacker—Sewer Maintenance Reg Conn, $0.9 million. Mission change delayed project.

(1979) Rickenbacker—Sewer Treatment Disposal, $0.5 million. Mission change delayed project.

(1979) Malmstrom—Reg Sewer Connection, $1.7 million. Delay of city project tie-in.

(1979) Wright-Patterson—Energy Monitoring Control System (EMCS), $3.4 million. Resolving criteria clarification.

(1979) Hanscom—EMCS, $2.0 million. Resolving design criteria problems.

(1979) Reese—EMCS, $0.7 million. Resolving software problems.

(1979) Holloman—EMCS, $0.5 million. Resolving software problems.

(1979) Tinker—Fire Station, $1.0 million. Shortfall funding, awaiting funds.

(1979) Elgin Aux—9—Chapel Center, $1.2 million. Shortfall funding, awaiting funds.

(j) 3.5 percent—family housing. 5.0 percent to 5.5 percent—CONUS construction depending upon service. 5.5 percent to 6.5 percent—overseas, depending on service.

Question. For the record, for fiscal years 1980 and 1981, provide summary data for construction contracts awarded on other than a competitive basis to the lowest responsible bidder. Provide a Department of defense summary and summaries by Military Departments. The information follows:

Report required by Section 604 of Public Law 96-418 covering military construction awarded without competition during fiscal years 1980-81:

DEPARTMENT OF DEFENSE SUMMARY OF—

	1980	1981
Total new construction contract awards	1,807,562,062	2,175,964,262
Total new awards without price competition	65,699,671	283,299,646
Percent new awards without price competition (8A set asides, overseas construction, etc.)	3.63	13.11
Total new awards without formal advertising	198,274,429	601,685,846
Percent new awards without formal advertising	10.97	27.65

Report required by section 604 of Public Law 96-418 covering military construction awarded without competition during fiscal years 1980-81:

MILITARY DEPARTMENT SUMMARIES OF—

	Army	
	1980	1981
Total new construction contract awards	$982,941,955	$1,453,665,515
Total new awards without price competition	44,756,472	153,655,171
Percent new awards without price competition (8A set asides, overseas construction, etc.)	4.55	10.57
Total new awards without formal advertising	176,205,721	407,680,407

MILITARY DEPARTMENT SUMMARIES OF——Continued

	Army	
	1980	1981
Percent new awards without formal advertising	17.93	28.04

	Navy	
	1980	1981
Total new construction contract awards	$804,360,717	$644,249,700
Total new awards without price competition	18,505,396	131,535,259
Percent new awards without price competition (8A set asides, overseas construction, etc.)	2.3	20.4
Total new awards without formal advertising	19,631,505	182,650,290
Percent new awards without formal advertising	2.4	28.4

	Air Force	
	1980	1981
Total new construction contract awards	$20,259,390	$78,049,047
Total new awards without price competition	2,437,203	109,216
Percent new awards without price competition (8A set asides, overseas construction, etc.)	12	0.14
Total new awards without formal advertising	2,437,203	11,355,149
Percent new awards without formal advertising	12	14.6

Mr. BRINKLEY. The subcommittee will stand in recess for 5 minutes.

[Whereupon, at 10:25 a.m., the subcommittee proceeded to other business.]

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